IN THE HIGH COURT OF PUNJAB AND HARYANA AT

CHANDIGARH

CWP No. 537 of 2006

Date of decision 23 .5.2007

Rajinder Parsad Behal .. petitioner

Versus

State of Punjab and others .. Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR
HON'BLE MR. JUSTICE ARVIND KUMAR

PRESENT: Mr.Ajay Pal Singh , Advocate for the petitioner
Mr. Amol Rattan Singh, Addl. AG Pb. for respondent no.1
Mr. A.R.Takkar, Advocate for respondent nos. 2 to 4.

M.M.Kumar, J.

In this petition filed under Article 226 of the Constitution the petitioner prays for quashing order dated 13.12.2005 (Annexure P.5) vide which his claim for gratuity has been rejected by respondent no. 4. A further prayer has also been made for directing the respondents to release the arrears of gratuity and other benefits as are applicable to the employees of the Industry Department alongwith interest at the rate of 12 percent from the date of accrual.

Brief facts of the case are that in pursuance to an advertisement dated 24.12.1995, the petitioner was appointed as Assistant Manager on the basis of the interview held by the office of respondent no. 3 on 13.2.1996. Vide letter dated 25.3.1996(Annexure P.1), the petitioner was asked to join the duty within one month. The petitioner joined the service within the stipulated period and thereafter he was given the appointment letter dated 24.6.1996 (Annexure P.2) wherein break up of the packages and salary was

mentioned. The petitioner served as Assistant Manager and he retired on 31.01.2004 having attained the age of superannuation. It is claimed that as the petitioner has served the institute for 8 years, he was entitled for the gratuity under the Payment of Gratuity Act, 1972 but the said benefit has been denied by the respondents. The petitioner made a representation (Annexure P.3) on 24.11.2004 which was rejected. The petitioner is stated to have met respondent nos. 2 and 3 on different time and occasion. Eventually, he served a legal notice (Annexure P.4). The respondents vide order dated 13.12.2005 (Annexure P.5) rejected the claim of the petitioner for gratuity as having been rendered infructuous because the petitioner has been paid a sum of Rs. 97,863/- on account of superannuation benefits and thus the petitioner is not entitled to gratuity.

Learned counsel for the petitioner has submitted that as per the terms of appointment letter (Annexure P.2), the benefit of 10 percent of basic per month as supernnuation was the package given in the salary which was to be paid by the respondents to the petitioner and no element of gratuity was included in it. He has further submitted that the superannuation amount was to be kept in a separate account but no interest on that amount was paid to the petitioner.

In response to notice of motion, respondents have filed reply. Respondent nos. 2,3 and 4 have submitted that petitioner was given contractual appointment for a period of five years and the same was to be extended thereafter for another period of 5 years depending upon satisfactory performance of the employee. After five years, the service contract of the petitioner was renewed for a period till he attained the age of superannuation vide letter dated 21.4.2001. In para 3 it is stated that fixed

emolument structure is approved by its Governing Body whereby gratuity is given only to the lower cadre of employees like Helper/Peon/Driver/ Clerk/ Accountant etc. and in the case of higher cadre employees in lieu of gratuity a fixed superannuation amount is given. The employees in the higher cadre infact got this salary structure approved by the Governing Body as one time fixed superannuation amount which is a better deal than gratuity benefit. The petitioner at the time of joining the service accepted the appointment with the fixed salary structure as well as other terms and conditions such as superannuation benefits in lieu of gratuity as given in his appointment letter and thus the petitioner was never entitled to gratuity.

After hearing the learned counsel for the parties and perusing the paper book with their assistance, we are of the considered view that there is no merit in the petition and the same is liable to be dismissed. The petitioner was offered appointment on the post of Assistant Manager vide letter dated 24.6.1996 (Annexure P.2) at a gross salary of Rs.10,500/- per month. Clause (vi) of the appointment letter provides that 10% of basic pay subject to maximum of Rs.500/- as CPF and 10 percent of basic per month as superannuation was to be deposited in separate accounts by the Institute. The afore mentioned Clause (vi) of appointment letter reads as under:-

> " vi) 10% of basic subject to max. Rs. 500/- as CPF and 10% of Basic per month as superannuation will be deposited in separate accounts by the Institute."

After accepting the terms and conditions of appointment letter dated 24.5.1996 (Annexure P.2), the petitioner had joined the duties with the respondents. Moreover, the petitioner on his retirement had received a sum of Rs. 97,863/- on account of superannuation benefits besides other

legal dues whereas the gratuity amount would have worked out only Rs. 66,918/-. The petitioner having joined the duty after accepting the terms and conditions of appointment is not entitled to challenge the same at a later stage. Apart from this, the petitioner got Rs. 97,863/- as superannuation benefits as against Rs. 66,918/- as gratuity amount which is more than the amount claimed in this petition.

In view of the above, there is no merit in the petition and the same is dismissed.

(M.M.Kumar)
Judge

(Arvind Kumar)
Judge

23.5.2007
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